

Lubin demonstrates innovative giving option

by *Scotty Mann, '00*

The Mandel Clinic was recently named as a recipient of funds remaining from several class action suits brought by the law firm of DiTommaso & Lubin on behalf of a class of plaintiffs who were improperly charged an "occupancy" tax during their stays in several suburban hotels. *Cy pres* funds—settlement funds left unclaimed—were divided among several charities. Peter Lubin, '83 thoughtfully suggested to the court and the defendants that the Mandel Clinic be named as one of those charities.

It is common for *cy pres* funds to remain after the conclusion of class actions. According to Lubin, a number of factors may determine who will be awarded such funds. Charities or social service organizations that address a type of wrong similar to that alleged in the class action will frequently receive unclaimed funds. However, the relationship between the selected charities and the underlying claims of the lawsuit does not have to be direct, so long as those charities serve some groups or individuals who suffer from similar wrongs as the injured class.

While judges at times remain very

involved in determining who will benefit, and particularly so when a case proceeds to judgment, Lubin has observed that



in class action settlements, counsel for both plaintiffs and defendants often successfully designate recipients.

At times, deciding who will receive *cy pres* funds is contentious. In a recent high-profile class action involving the use by McDonald's of beef by-products

in their french fries, litigation has erupted over who should receive the *cy pres* funds resulting from the settlement. But according to Lubin, in the absence of outside objectors, the parties usually work out the allocation of funds fairly amicably, and judges will approve such settlements if they are fair and meet the requirements for class settlements. Lubin said that in class actions involving consumer claims, like his hotel cases, it would be unlikely to have an objection to a legal aid society or clinic receiving such funds because such organizations generally tend to benefit consumers.

While Lubin did not participate in the Clinic as a student, he had several classmates who expressed great satisfaction with their clinical experiences. Throughout his career Lubin has worked on a number of civil rights cases and pro bono matters, and has also witnessed how much students benefit from access to clinical experiences. As a result, he has been a regular supporter of the Clinic, and the decision to seek the award of *cy pres* funds was an extension of his past involvement; he hopes to make similar designations if the opportunity arises in the future.